

Assigned ^{STJ} Arner

UNITED STATES TAX COURT

WASHINGTON, DC 20217

RICHARD E. WALBAUM,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

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Docket No. 9372-09.

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U.S. JUDGE	
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ORDER OF DISMISSAL AND DECISION

This case is before the Court on respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 29, 2009.

Petitioner resided in the State of Iowa when the petition was filed with the Court.

Background

Petitioner purportedly seeks review of separate notices of deficiency that determined deficiencies in income taxes, as well as various additions to tax ("penalties"), for the taxable years 2003, 2004, and 2006. The deficiencies in income taxes are based on respondent's determination that petitioner received compensation that he failed to report. The additions to tax are based on respondent's determinations that petitioner failed to file income tax returns, failed to pay income tax, and failed to pay estimated tax. See secs. 6651(a)(1), 6651(a)(2), and 6654(a).¹

In the Petition, petitioner does not deny receiving compensation during the years in issue, nor does he allege receiving compensation in any amount less than that determined by respondent in the notices of deficiency. See Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459. Similarly, in the Petition,

¹ All section references are to the Internal Revenue Code, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

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petitioner does not allege facts raising a justiciable issue regarding any of additions to tax. Instead, petitioner challenges only the "debt-money system", which petitioner characterizes as "a mathematically flawed system and a violation of natural law." In that regard, petitioner pleads as follows:

The issue of law to be determined is:

- Does the power to tax include the power to steal or defraud?

The issue of fact to be determined:

- Is the government stealing via the design of the monetary system?

* * *

The issue of law to be decided:

- Does government have the power to create a monetary system that creates unpayable exponentially rising debt and the interest thereon, that places the people into a state of peonage and involuntary servitude?

* * *

The issue of law to be decided:

- While government may have wide discretion, does that discretion include design of a system that violates the religious principles of a large segment of society, and contrary to natural law?

4) Regarding my legal duty and responsibility to file and pay taxes:

The issue of law is stated:

All [citizens] alike owe allegiance to the government, and the government owes to them a duty of protection. These are reciprocal obligations, and each is a consideration for the other. [Citation omitted.]

Citizenship is membership in a political society, and implies the reciprocal obligations as compensation for each other of a duty of allegiance on the part of the member and a duty of protection on the part of the society. [Citation omitted.]

The issue of fact to be decided:

- Is government pillaging or plundering via the monetary system, instead of protecting?

As previously stated, on May 29, 2009, respondent filed a Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted. Thereafter, and pursuant to our Order dated June 2, 2009, petitioner filed both an Amended Petition and an Objection to respondent's motion on July 2, 2009.

In the Amended Petition, petitioner states, inter alia, as follows:

6. Petitioner disagrees with the IRS determination of deficiency because it is based on erroneous information returns issued or mandated by companies he worked for, as explained in the Answer [Objection] to Respondent's Motion to Dismiss. [Emphasis added.]

7. Petitioner asserts that the above-mentioned companies did not understand the I.R.C. [Internal Revenue Code] and its proper interpretation in light of court rulings, resulting in the filing of erroneous returns. Petitioner was also ignorant and did what he was told.

Petitioner attached to the Amended Petition copies of so-called "zero returns" dated June 25, 2009, on which he mischaracterizes Social Security and Medicare taxes withheld by his employer(s) as income tax and demands the refund thereof.² (By acknowledging that he was subject to withholding, petitioner necessarily acknowledges an employment relationship.) Petitioner also sets forth his theory that compensation earned by a "private sector individual" is not taxable; thus:

² Social Security, Medicare, and other employment taxes are imposed by Subtitle C of Title 26 (Internal Revenue Code), whereas income tax is imposed by Subtitle A of Title 26. Neither Social Security nor Medicare tax is subject to the deficiency procedures, see Subchapter B (secs. 6211-6216) of Chapter 63 of Subtitle C, and employment taxes are generally not reportable on any form in the 1040 series (U.S. Individual Income Tax Return).

The term "compensation for services" derives its meaning from The Classification Act of 1923 (see "service" and "compensation", 42 Stat. 1488, Ch. 265, Sec. 2, which clearly establishes that those who work in the federal government earn "compensation". Nothing is said about private sector individuals).

And insofar as self-employment is concerned, petitioner cites section 7701(a)(26) and asserts that he is not subject to self-employment tax because he was not engaged in the performance of the functions of a public (i.e., governmental) office.³

In his Objection, petitioner acknowledges that there were "companies that Petitioner did work for", but he continues to allege that his compensation is not taxable, as argued in the Amended Petition.

Discussion

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted. We may grant such a motion when it appears beyond doubt that the party's adversary can prove no set of facts in support of a claim that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Price v. Moody, 677 F.2d 676, 677 (8th Cir. 1982).

Rule 34(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax in dispute. See Gordon v. Commissioner, 73 T.C. 736, 739 (1980). Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982).

Any issue not raised in the assignments of error is deemed to be conceded. Rule 34(b)(4); Jarvis v. Commissioner, supra at 658 n.19; Gordon v. Commissioner, supra. Further, the failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for the Court to hold such party in default, either on the motion of another party or on the initiative of the Court. Rule 123(a). Similarly, the failure of a petition to

³ Respondent has never asserted that petitioner holds public office or that petitioner is engaged in the performance of the functions of a public office.

conform to the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a)(1), 123(b).

We consider petitioner's position in this case in the context of the Petition, the Amended Petition, and the Objection to respondent's motion to dismiss. Petitioner acknowledges having an employer, but his ultimate denial of compensation rests upon specious arguments. Suffice it to say that petitioner, a resident of the State of Iowa, is a taxpayer subject to the Federal income tax who is obliged to file a Federal income tax return and pay Federal income tax on his compensation. See secs. 1, 61(a), 6012(a)(1), 7701(a)(1) and (14); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable."); see also Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.").

Giving due regard to the statements contained in respondent's motion, which statements are incorporated in this order as the findings and analysis of the Court made in support of the ruling embodied herein, giving petitioner not only the benefit of every doubt as we are required to do at this stage of the proceeding, see Hicks v. Small, 69 F.3d 967, 969 (9th Cir. 1995), but wide pleading latitude as a pro se litigant, see Estelle v. Gamble, 429 U.S. 97, 106 (1976), we find that the Petition and the Amended Petition filed in this case fail to raise any justiciable issue. Rule 40; see Parker v. Commissioner, supra at 787; White v. Commissioner, supra.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 29, 2009, is granted, and this case is hereby dismissed. It is further

[continued on next page]

ORDERED and DECIDED that there are deficiencies in, and additions to, petitioner's Federal income taxes as follows:

Year	Deficiency	Additions to tax		
		Sec. 6651(a)(1)	Sec. 6651(a)(2)*	Sec. 6654(a)
2003	\$ 2,721.00	\$ 604.35	\$ 671.50	-
2004	3,704.00	833.40	796.36	\$106.14
2006	12,528.00	2,818.80	1,190.16	592.87

*Computed through the date of the notice of deficiency.
See sec. 6651(a)(2).

(Signed) Robert N. Armen, Jr.
Special Trial Judge

ENTERED:

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